# BLOG

**Solicitor General Tushar Mehta made overruled, false, misleading and incorrect submissions on vaccine policy.**

- **It is Contempt of the Supreme Court.**
- **Central Government becomes laughing stock.**

**1.** On **15th March, 2022** the **Solicitor General for India Shri. Tushar Mehta** made submissions before Supreme Court Bench headed by **Justice L. Nageshwar Rao** regarding the vaccine mandates by some states. His submissions were threefold:

> **(a)** Centre has not made the vaccines mandatory. Few states made it mandatory.
>
> **(b)** States can make it mandatory and the court should not interfere with the decision taken by the state authority and the court should respect the expertise of the state.
>
> **(c)** The person has right to die but no right to spread infection.

**2.** In support of his contention Mr. Tushar Mehta relied upon the outdated, overruled and 117 years old judgment in **Jacobson's case, 1905 SCC OnLine US SC 51.**

**3.** The submissions of Solicitor General Tushar Mehta in a case of grossest contempt of the Supreme Court on following grounds:

**4. [A]** Similar argument of S.G. Tushar Mehta is already rejected by larger Bench of the Supreme Court including the same Judge i.e. Justice L. Nageshwar Rao.

In the case of **Distribution of Essential Supplies & Services during Pandemic, In re, (2021) 7 SCC 772** where in para 17, 18, & 19 it is ruled by the larger Bench as under;

> ***"17.*** *The Supreme Court of United States, speaking in the wake of the present COVID-19 Pandemic in various instances, has overruled policies by observing, inter alia, that "Members of this Court are not public health experts, and we should respect the judgment of those with special expertise and responsibility in this area. But even in a pandemic, the Constitution cannot be put away and forgotten" [Roman Catholic Diocese of Brooklyn v. Cuomo, 2020 SCC OnLine US SC 9 : 141 S Ct 63 : 592 US ....(2020)] and "a public health emergency does not give Governors and other public officials carte blanche to disregard the Constitution for as long as the medical problem persists. As more medical and scientific evidence becomes available, and as States have time to craft policies in light of that evidence, courts should expect policies that more carefully account for constitutional rights" [Calvary Chapel Dayton Valley v. Sisolak, 2020 SCC OnLine US SC 10 : 140 S Ct 2603 (2020) (Mem) (Justice Alito Dissenting Opinion)] .*
>
> ***18.*** *Similarly, the courts across the globe have responded to constitutional challenges to executive policies that have directly or indirectly violated rights and liberties of citizens. Courts have often reiterated the expertise of the executive in managing a public health crisis, but have also warned against arbitrary and irrational policies being excused in the*

*garb of the "wide latitude" to the executive that is necessitated to battle a pandemic. This Court in Gujarat Mazdoor Sabha v. State of Gujarat [Gujarat Mazdoor Sabha v. State of Gujarat, (2020) 10 SCC 459, para 11 : (2021) 1 SCC (L&S) 38] , albeit while speaking in the context of labour rights, had noted that policies to counteract a pandemic must continue to be evaluated from a threshold of proportionality to determine if they, inter alia, have a rational connection with the object that is sought to be achieved and are necessary to achieve them.*

***19.*** *In grappling with the second wave of the Pandemic, this Court does not intend to second-guess the wisdom of the executive when it chooses between two competing and efficacious policy measures. However, it continues to exercise jurisdiction to determine if the chosen policy measure conforms to the standards of reasonableness, militates against manifest arbitrariness and protects the right to life of all persons. This Court is presently assuming a dialogic jurisdiction where various stakeholders are provided a forum to raise constitutional grievances with respect to the management of the Pandemic. Hence, this Court would, under the auspices of an open court judicial process, conduct deliberations with the executive where justifications for existing policies would be elicited and evaluated to assess whether they survive constitutional scrutiny.***"***

**5.** Needless to mention that the ratio of vaccine mandate in Jacobson's case is already stand overruled in US Supreme Court & also in India.

**6.** In the case of **Calvary Chapel Dayton Valley Vs. Steve Sisolak, Governor of Nevada 2020 SCC OnLine US SC 10,** it is ruled as under;

> ***"****The Governor of Nevada apparently has different priorities. Claiming virtually unbounded power to restrict constitutional rights during the Covid-19 pandemic, he has issued a directive that severely limits attendance at religious services.*
>
> *That Nevada would discriminate in favor of the powerful gaming industry and its employees may not come as a surprise, but this Court's willingness to allow such discrimination is disappointing. We have a duty to defend the Constitution, and even a public health emergency does not absolve us of that responsibility.****"***
>
> *It is a mistake to take language in Jacob-son as the last word on what the Constitution allows public officials to do during the COVID-19 pandemic*.

**7.** Recently the United State Supreme Court on **13th January, 2022** quashed the vaccine mandates of the state.

**8.** The judgment of Calvary Chapel is followed by the Indian Supreme Court in **(2021) 7 SCC 772 (Supra)**. Therefore it is binding and Jacobson's vaccine mandate judgment is not binding.

**9.** Furthermore the Jacobson's ratio is also stands overruled due to the ratio laid down by the Supreme Court of India in the case of **Common Cause Vs. Union of India (2018) 5 SCC 1**, where it is ruled that no one can be forced to take any medicine. Right to refuse to take the treatment is a fundamental right under

Article 21 of the Constitution of India and no authority can ask any citizen a question regarding his reason to not to take any treatment (vaccine).

**10.** Same are the provisions of **Universal Declaration on Bioethics and Human Rights, 2005 (UDBHR)**. Article 7 of **International Covenant on Civil and Political Rights (ICCPR)** read thus;

> ***"Article 7 - No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."***

**11.** As per Article 13 of the Constitution of India all the laws before 1950 which are against the Article 14, 19, 21 of the Constitution are declared as illegal and null & void.

**12.** On **29th November, 2021,** Justice L. Nageshwar Rao rejected the similar arguments of Mr. Tushar Mehta.

> ***"If Vaccine Mandates Are Not Proportionate To Personal Liberty, We Will Go Into It : Supreme Court***
>
> *The Bench reminded the Solicitor General that when the notice was issued, the Court made it very clear that it would not encourage vaccine hesitancy, but it opined that the concerns raised by the Petitioners are to be addressed.*
>
> ***Link:-****https://www.livelaw.in/top-stories/supreme-court-covid-19-vaccination-mandates-imposed-implead-states-186563"*

**13.** On **15th March 2022,** Justice Shri. L. Nageshwar Rao also specifically objected Mr. Tushar Mehta on the point that only reasonable restriction is permissible.

**14.** Supreme Court in the case of **State of Orissa Vs. Nalinikanta Muduli AIR 2004 SC 4272**, had ruled that the advocate relying on overruled judgment will be guilty of falling standard of professional ethics and misconduct.

**15. In Lal Bahadur Gautam Vs. State of UP 2019 SCC OnLine SC 687** it the Hon'ble Supreme Court while condemning the misconduct of a Counsel observed in **"para 10"** that, relying on judgments of repealed act amounts to giving overruled judgment **the Court must take the note of the misconduct of the advocates making overruled and irrelevant submission.** It is ruled as under;

> ***"10.*** *Before parting with the order, we are constrained to observe regarding the manner of assistance rendered to us on behalf of the respondent management of the private college. Notwithstanding the easy access to information technology for research today, as compared to the plethora of legal Digests which had to be studied earlier,* ***reliance was placed upon a judgment based on an expressly repealed Act by the present Act, akin to relying on an overruled judgment. This has only resulted in a waste of judicial time of the Court, coupled with an onerous duty on the judges to do the necessary research. We would not be completely wrong in opining that though it may be negligence also, but the consequences could have been fatal by misleading the Court leading to an erroneous judgment****.*
>
> ***11. Simply, failure in that duty is a wrong against the justice delivery system in the country. Considering that over the years, responsibility and care on this score has***

***shown a decline, and so despite the fact that justice is so important for the Society, it is time that we took note of the problem, and considered such steps to remedy the problem. We reiterate the duty of the parties and their Counsel, at all levels, to double check and verify before making any presentation to the Court. The message must be sent out that everyone has to be responsible and careful in what they present to the Court. Time has come for these issues to be considered so that the citizen's faith in the justice system is not lost. It is also for the Courts at all levels to consider whether a particular presentation by a party or conduct by a party has occasioned unnecessary waste of court time, and if that be so, pass appropriate orders in that regard. After all court time is to be utilized for justice delivery and in the adversarial system, is not a licence for waste.***

***12.*** *As a responsible officer of the Court and an important adjunct of the administration of justice, the lawyer undoubtedly owes a duty to the Court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client as observed in State of Punjab & Ors. vs. Brijeshwar Singh Chahal & Ors., (2016) 6 SCC 1: "34….relationship between the lawyer and his client is one of trust and confidence. As a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as mouthpiece of his client….."*

*13. The observations with regard to the duty of a counsel and the high degree of fairness and probity required was noticed in D.P. Chadha vs. Triyugi Narain Mishra and others, (2001) 2 SCC 221: "22. A mere error of judgment or expression of a reasonable opinion or taking a stand on a doubtful or debatable issue of law is not a misconduct; the term takes its colour from the underlying intention. But at the same time misconduct is not necessarily something involving moral turpitude. It is a relative term to be construed by reference to the subjectmatter and the context wherein the term is called upon to be employed. A lawyer in discharging his professional assignment has a duty to his client, a duty to his opponent, a duty to the court, a duty to the society at large and a duty to himself. It needs a high degree of probity and poise to strike a balance and arrive at the place of righteous stand, more so, when there are conflicting claims. While discharging duty to the court, a lawyer should never knowingly be a party to any deception, design or fraud. While placing the law before the court a lawyer is at liberty to put forth a proposition and canvass the same to the best of his wits and ability so as to persuade an exposition which would serve the interest of his client so long as the issue is capable of that resolution by adopting a process of reasoning. However, a point of law well settled or admitting of no controversy must not be dragged into doubt solely with a view to confuse or mislead the Judge and thereby gaining an undue advantage to the client to which he may not be entitled. Such conduct of an advocate becomes worse when a view of the law canvassed by him is not only*

*unsupportable in law but if accepted would damage the interest of the client and confer an illegitimate advantage on the opponent. In such a situation the wrong of the intention and impropriety of the conduct is more than apparent. Professional misconduct is grave when it consists of betraying the confidence of a client and is gravest when it is a deliberate attempt at misleading the court or an attempt at practicing deception or fraud on the court. The client places his faith and fortune in the hands of the counsel for the purpose of that case; the court places its confidence in the counsel in case after case and day after day. A client dissatisfied with his counsel may change him but the same is not with the court. And so the bondage of trust between the court and the counsel admits of no breaking.*

*24. It has been a saying as old as the profession itself that the court and counsel are two wheels of the chariot of justice. In the adversarial system, it will be more appropriate to say that while the Judge holds the reigns, the two opponent counsel are the wheels of the chariot. While the direction of the movement is controlled by the Judge holding the reigns, the movement itself is facilitated by the wheels without which the chariot of justice may not move and may even collapse. Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of the chariot. As responsible officers of the court, as they are called – and rightly, the counsel have an overall obligation of assisting the courts in a just and proper manner in the just and proper administration of justice. Zeal*

*and enthusiasm are the traits of success in profession but overzealousness and misguided enthusiasm have no place in the personality of a professional.*

*26. A lawyer must not hesitate in telling the court the correct position of law when it is undisputed and admits of no exception. A view of the law settled by the ruling of a superior court or a binding precedent even if it does not serve the cause of his client, must be brought to the notice of court unhesitatingly. This obligation of a counsel flows from the confidence reposed by the court in the counsel appearing for any of the two sides. A counsel, being an officer of court, shall apprise the Judge with the correct position of law whether for or against either party."*

*14. That a higher responsibility goes upon a lawyer representing an institution was noticed in State of Rajasthan and another vs. Surendra Mohnot and others, j(2014) 14 SCC 77: "33. As far as the counsel for the State is concerned, it can be decidedly stated that he has a high responsibility. A counsel who represents the State is required to state the facts in a correct and honest manner. He has to discharge his duty with immense responsibility and each of his action has to be sensible. He is expected to have higher standard of conduct. He has a special duty towards the court in rendering assistance. It is because he has access to the public records and is also obliged to protect the public interest. That apart, he has a moral responsibility to the court. When these values corrode, one can say "things fall apart". He should always remind himself that an advocate,*

*while not being insensible to ambition and achievement, should feel the sense of ethicality and nobility of the legal profession in his bones.*

*We hope, that there would be response towards duty; the hallowed and honoured duty."*

**16.** While passing strictures against the Senior Counsel, the Supreme Court in the case of **E.S. Reddy Vs State (1987) 3 SCC 258** it is ruled as under;

***"A) Duty of Advocates towards Court – Held, he has to act fairly and place all the truth even if it is against his client – he should not withhold the authority or documents which tells against his client – It is a mistake to suppose that he is a mouthpiece of his client to say that he wants – He must disregard with instruction of his client which conflicts with their duty to the Court. (Para 11 & 12 )***

***B) Duty and responsibility of senior counsel - By virtue of the pre-eminence which senior counsel enjoy in the profession, they not only carry greater responsibilities but they also act as a model to the junior members of the profession. A senior counsel more or less occupies a position akin to a Queen's counsel in England next after the Attorney General and the Solicitor General. It is an honor and privilege conferred on advocates of standing and experience by the chief justice and the Judges of this court. They thus become leading counsel and take precedence on all counsel not having that rank- A senior counsel though he cannot draw up pleadings of the party,***

***can nevertheless be engaged "to settle" i.e. to put the pleadings into "proper and satisfactory form" and hence a senior counsel settling pleadings has a more onerous responsibility as otherwise the blame for improper pleadings will be laid at his doors. (Para 10)***

*"( 11 ) Lord Reid in Rondel v. Worsley has succinctly set out the conflicting nature of the duties a counsel has to perform in his own inimitable manner as follows :*

*Every counsel has a duty to his client fearlessly to raise every issue, advance every argument, and ask every question, however distasteful, , which he thinks will help his client's case. As an officer of the court concerned in the administration of justice, he has an overriding duty to the court, to the standards of his profession, and to the public, which may and often does lead to a conflict with his client's wishes or with what the client thinks are his personal interests. Counsel must not mislead the court, he must not lend himself to casting aspersions on the other party or witnesses for which there is no sufficient basis in the information in his possession, he must not withhold authorities or documents which may tell against his clients but which the law or the standards of his profession require him to produce. By so acting he may well incur the displeasure or worse of his client so that if the case is lost, his client would or might seek legal redress if that were open to him.*

*( 12 ) Again as Lord Denning, M. R. in Rondel v. W would say :*

*He (the counsel) has time and again to choose between his 265 duty to his client and his duty to the court. This is a conflict often difficult to resolve; and he should not be under pressure to decide it wrongly. . . . When a barrister (or an advocate) puts his first duty to the court, he has nothing to fear. (words in brackets added).*

*In the words of Lord Dinning:*

*It is a mistake to suppose that he is the mouthpiece of his client to say what he wants :. . . . He must disregard the most specific instructions of his client, if they conflict with his duty to the court. The code which requires a barrister to do all this is not a code of law. It is a code of honor. If he breaks it, he is offending against the rules of the profession and is subject to its discipline."*

**17.** Hon'ble Delhi High Court in **Court on its own motion v. State and Ors 2009 CRI. L. J. 677** has connected Sr. Counsel R. K. Anand and removed his status as a Sr. Counsel for his involvement in a conspiracy to mislead the court.

**18.** In **Heena Nikhil Dharia Vs. Kokilaben Kirtikumar Nayak and Ors. 2016 SCC OnLine Bom 9859** it is ruled as under;

***"35.** Wholly unrelated to any preliminary issue or the question of limitation, or to any estate, partition or administration action, is **the decision of AM Khanwilkar J (as he then was) in Chandrakant Govind Sutar v. MK Associates 2003 (1) Mh. LJ 1011 Counsel for the petitioner raised certain contentions on the maintainability of a civil***

***revision application. Khanwilkar J pronounced his judgement in open Court, finding for the petitioner. Immediately thereafter, counsel for the petitioner brought to the court's notice that certain relevant decisions on maintainability had not been placed. He requested that the judgement be not signed and instead kept for re-hearing on the question of maintainability. At that fresh hearing, petitioner's counsel placed decisions that clinched the issue against the petitioner. The civil revision application was dismissed. The counsel in question was A.S. Oka, now Mr. Justice Oka, and this is what Khanwilkar J was moved to observe in the concluding paragraph of his judgement:***

*'**9.**While parting I would like to make a special mention regarding the fairness of Mr. Oka, Advocate. He conducted the matter with a sense of detachment. In his own inimitable style* ***he did the wonderful act of balancing of his duty to his client and as an officer of the Court concerned in the administration of justice. He has fully discharged his overriding duty to the Court to the standards of his profession, and to the public, by not withholding authorities which go against his client****. As Lord Denning MR in* ***Randel v. W. (1996) 3 All E. R. 657*** *observed:*

*"Counsel has time and again to choose between his duty to his client and his duty to the Court. This is a conflict often difficult to resolve; and he should not be under pressure to decide it wrongly. Whereas when the Advocate puts his first duty to the Court, he has nothing*

> *to fear. But it is a mistake to suppose that he (the Advocate) is the mouthpiece of his client to say what he wants.* ***The Code which obligates the Advocate to disregard the instructions of his client, if they conflict with his duty to the Court, is not a code of law — it is a code of honour.*** *If he breaks it, he is offending against the rules of the profession and is subject to its discipline."*

*This view is quoted with approval by the Apex Court in* ***Re. T.V. Choudhary, [1987] 3 SCR 146*** *(E.S. Reddi v. Chief Secretary, Government of AP).*

***36. The cause before Khanwilkar J may have been lost, but the law gained, and justice was served****.*

***37.*** *Thirteen years ago, Khanwilkar J wrote of a code of honour. That was a time when we did not have the range, width and speed of resources we do today. With the proliferation of online databases and access to past orders on the High Court website, there is no excuse at all for not cross-checking the status of a judgement. I have had no other or greater access in conducting this research; all of it was easily available to counsel at my Bar.* ***Merely because a judgement is found in an online database does not make it a binding precedent without checking whether it has been confirmed or set aside in appeal****. Frequently, appellate orders reversing reported decisions of the lower court are not themselves reported.* ***The task of an advocate is perhaps more onerous as a result; but his duty to the court, that duty of fidelity to the law, is not in any lessened. If anything, it is higher now.***

***38. <u>Judges need the Bar and look to it for a dispassionate guidance through the law's thickets. When we are encouraged instead to lose our way, that need is fatally imperiled."</u>***

**19.** In **<u>Hindustan Organic Chemicals Ltd. Vs. ICI India Ltd.2017 SCC Online Bom 74 (Vol. 5 Page 780),</u>** it is ruled as under;

***"<u>DUTY OF ADVOCATES TO NOT TO MISLED THE COURT EVEN ACCIDENTALLY – THEY SHOULD COME BEFORE COURT BY PROPER ONLINE RESEARCH OF CASE LAW BEFORE ADDRESSING THE COURT.</u>***

*I have found counsel at the Bar citing decisions that are not good law.*

***<u>The availability of online research databases does not absolve lawyers of their duties as officers of the Court. Those duties include an obligation not to mislead a Court, even accidentally. That in turn casts on each lawyer to carefully check whether a decision sought to be cited is or is not good law.</u>*** *The performance of that duty may be more onerous with the proliferation of online research tools, but that is a burden that lawyers are required to shoulder, not abandon. Every one of the decisions noted in this order is available in standard online databases. This pattern of slipshod research is inexcusable."*

**20.** Hon'ble Supreme Court in **<u>State Of Orissa Vs. Nalinikanta Muduli (2004) 7 SCC 19 (Vol. 5 Page 776),</u>** had ruled as under;

> ***"6……****It is a very unfortunate situation that learned counsel for the accused who is supposed to know the decision did not bring this aspect to the notice of the learned single Judge. Members of the Bar are officers of the Court.* ***<u>They have a bounden duty to assist the Court and not mislead it. Citing judgment of a Court which has been overruled by a larger Bench of the same High Court or this Court without disclosing the fact that it has been overruled is a matter of serious concern.</u>*** *It is one thing that the Court notices the judgment overruling the earlier decision and decides on the applicability of the later judgment to the facts under consideration on it - It was certainly the duty of the counsel for the respondent before the High Court to bring to the notice of the Court that the decision relied upon by the petitioner before the High Court has been overruled by this Court.* ***<u>Moreover, it was duty of the learned counsel appearing for the petitioner before the High Court not to cite an overruled judgment -We can only express our anguish at the falling standards of professional conducts</u>****."*

**21. Advocate making misleading submissions should be expelled from the Roll of Bar Council:-**

Hon'ble Apex Court in **<u>R. Muthukrishnan's 2019 SCC OnLine SC 105,</u>** had ruled as under;

> ***''25.*** *It is said by Alexander Cockburn that "the weapon of the advocate is the sword of a soldier, not the dagger of the assassin". It is the ethical duty of lawyers not to expect any favour from a Judge. He must rely on the precedents, read them carefully and avoid corruption and collusion of any kind, not to*

*make false pleadings and avoid twisting of facts. In a profession, everything cannot be said to be fair even in the struggle for survival. The ethical standard is uncompromisable. Honesty, dedication and hard work is the only source towards perfection. An Advocate conduct is supposed to be exemplary. In case an Advocate causes disrepute of the Judges or his colleagues or involves himself in misconduct, that is the most sinister and damaging act which can be done to the entire legal system. Such a person is definitely deadwood and deserves to be chopped off.''*

**22. Litigating Same Issue Again & Again Is Gross Abuse Of Process Of Court And Contempt.**

**22.1.** In **Satluj Jal Vidyut Vs.Raj Kumar Rajinder Singh 2018 SCC OnLine SC 1636** it is ruled as under;

> ***"80.*** *In* ***K.K. Modi v. K.N. Modi, (1998) 3 SCC 573****, it was observed that one of the examples cited as an abuse of the process of the court is relitigation.* ***It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him"***

**22.2. In K.K. Modi Vs. K.N. Modi and Ors. (1998) 3 SCC 573.,** it is ruled as under;

> ***A. Reagitating & relitigating the same issue again & again is abuse of process of court if any party defendant or plaintiff raises an issue which had be decided in Criminal***

***trial then court can struck down those pleading as an abuse of process of court. One of the examples cited as an abuse of the process of court is re-litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him.***

*But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court.* ***A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted.*** *Undoubtedly, it is a matter of courts' discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.*

*B. . In Mcllkenny v. Chief Constable of West Midlands Police Force and Anr., (1980) 2 AER 227, the Court of Appeal in England struck out the pleading on the ground that the action was an abuse of the process of the court since it raised an issue identical to that which had been finally determined at the plaintiffs' earlier criminal trial. The court*

*said even when it is not possible to strike out the plaint on the ground of issue estoppel, the action can be struck out as an abuse of the process of the court because it is an abuse for a party to re-litigate a question or issue which has already been decided against him even though the other party cannot satisfy the strict rule of res judicata or the requirement of issue estoppel.*

*C. In the case of Greenhalgh v. Mallard, (1947) 2 AER 255 the court had to consider different proceedings on the same cause of action for conspiracy, but supported by different averments. The Court, held that if the plaintiff has chosen to put his case in one way, he cannot thereafter bring the same transaction before the court, put his case in another way and say that he is relying on a new cause of action. In such circumstances he can be met with the plea of res judicata or the statement or plaint may be struck out on the ground that the action is frivolous and vexations and an abuse of the process of court.*

**22.3.** In **Vijay Lata Vs. Sh. Rajiv Arora 2021 SCC OnLine P&H 203** it is ruled as under;

***"Relitigating the same issue when it was already rejected –cost of Rs. 25,000/- imposed.***

**22.4.** In **Union of India v. Pirthwi Singh, (2018) 16 SCC 363** it is ruled as under;

***"3.*** *After dismissal of the batch of appeals, the Union of India filed yet another appeal on the same subject being Civil Appeal No. (blank) of 2018 (Diary No. 4893 of 2018) entitled Union of India v. Balbir Singh. That appeal came up for consideration before this Court on 9-3-2018 [Union of India v. Balbir Singh, 2018 SCC OnLine SC 2450, wherein it was directed:"1. Leave to appeal is granted. Delay condoned. This appeal was filed well after several similar matters were dismissed by this Court. We cannot appreciate the conduct of the Union of India in this regard of filing civil appeals/special leave petitions after the issue has been concluded by this Court. This is unnecessarily adding to the burden of the justice delivery systems for which the Union of India must take full responsibility.2. The civil appeal is dismissed with costs of Rs 1,00,000 to be deposited by the appellants with the Supreme Court Legal Services Committee within four weeks from today for utilisation of juvenile justice issues.3. The Union of India must shape up its litigation policy.4. List the matter after five weeks for compliance."] and was dismissed following the decision in Balbir Singh Turn [Union of India v. Balbir Singh Turn, (2018) 11 SCC 99 : (2018) 1 SCC (L&S) 866 : (2017) 14 Scale 189] . While dismissing the appeal, it was noted that it was filed well after several similar matters were dismissed [**Ed.**: It seems that reference is to Union of India v. Johari Mal, Diary No. 37952 of 2017, order dated 4-1-2018 (SC) and Union of India v. Rajeev Kumar, Diary No. 38767 of 2017, order dated 16-2-2018 (SC), which were disposed of as dismissed in terms of order in Union of India v. Balbir*

*Singh, (2018) 11 SCC 99 : (2018) 1 SCC (L&S) 866] by this Court. The conduct of the Union of India in filing civil appeals/special leave petitions after the issue is concluded by this Court was not appreciated. It was noted that the Union of India must take full responsibility for unnecessarily adding to the burden of the justice delivery system.*

***4.*** *To ensure that the Union of India is far more circumspect, costs of Rs 1,00,000 were imposed and it was observed that the Union of India must shape up its litigation policy. Unfortunately, the Union of India has learnt no lesson and has continued its non-cooperative attitude.*

***5.*** *The present appeal was filed on 8-3-2018 which is also well after the decision in Balbir Singh Turn [Union of India v. Balbir Singh Turn, (2018) 11 SCC 99 : (2018) 1 SCC (L&S) 866 : (2017) 14 Scale 189] . We would have expected that with the dismissal of the appeals relating to Balbir Singh Turn [Union of India v. Balbir Singh Turn, (2018) 11 SCC 99 : (2018) 1 SCC (L&S) 866 : (2017) 14 Scale 189] and Balbir Singh [Union of India v. Balbir Singh, 2018 SCC OnLine SC 2450, wherein it was directed:"1. Leave to appeal is granted. Delay condoned. This appeal was filed well after several similar matters were dismissed by this Court. We cannot appreciate the conduct of the Union of India in this regard of filing civil appeals/special leave petitions after the issue has been concluded by this Court. This is unnecessarily adding to the burden of the*

*justice delivery systems for which the Union of India must take full responsibility.2. The civil appeal is dismissed with costs of Rs 1,00,000 to be deposited by the appellants with the Supreme Court Legal Services Committee within four weeks from today for utilisation of juvenile justice issues.3. The Union of India must shape up its litigation policy.4. List the matter after five weeks for compliance."] , the Union of India would take steps to withdraw this appeal from the Registry of this Court so that it is not even listed and there is no unnecessary burden on the Judges. But obviously, the Union of India has no such concern and did not withdraw its appeal from the Registry itself.*

***6.*** *The Union of India must appreciate that by pursuing frivolous or infructuous cases, it is adding to the burden of this Court and collaterally harming other litigants by delaying hearing of their cases through the sheer volume of numbers. If the Union of India cares little for the justice delivery system, it should at least display some concern for litigants, many of whom have to spend a small fortune in litigating in the Supreme Court.*

***7.*** *On 23-6-2010, the Union of India released the "National Legal Mission to Reduce Average Pendency Time from 15 Years to 3 Years" and this document is called "National Litigation Policy". The vision/mission of the National Litigation Policy is as follows:*

*"1. The National Litigation Policy is based on the recognition that Government and its various agencies are the predominant litigants in courts and Tribunals in the country. Its aim is to transform Government into an efficient and responsible litigant. This policy is also based on the recognition that it is the responsibility of the Government to protect the rights of citizens, to respect fundamental rights and those in charge of the conduct of government litigation should never forget this basic principle.*

*"Efficient litigant" means*

*(i) Focusing on the core issues involved in the litigation and addressing them squarely.*

*(ii) Managing and conducting litigation in a cohesive, coordinated and time-bound manner.*

*(iii) Ensuring that good cases are won and bad cases are not needlessly persevered with.*

*(iv) A litigant who is represented by competent and sensitive legal persons: competent in their skills and sensitive to the facts that Government is not an ordinary litigant and that a litigation does not have to be won at any cost.*

*"Responsible litigant" means*

*(i) That litigation will not be resorted to for the sake of litigating.*

*(ii) That false pleas and technical points will not be taken and shall be discouraged.*

*(iii) Ensuring that the correct facts and all relevant documents will be placed before the court.*

*(iv) That nothing will be suppressed from the court and there will be no attempt to mislead any court or tribunal.*

*2. The Government must cease to be a compulsive litigant. The philosophy that matters should be left to the courts for ultimate decision has to be discarded. The easy approach, "Let the court decide", must be eschewed and condemned.*

*3. The purpose underlying this Policy is also to reduce government litigation in courts so that valuable court time would be spent in resolving other pending cases so as to achieve the goal in the National Legal Mission to reduce average pendency time from 15 years to 3 years. Litigators on behalf of the Government have to keep in mind the principles incorporated in the National Mission for judicial reforms which includes identifying bottlenecks which the Government and its agencies may be concerned with and also removing unnecessary government cases. Prioritisation in litigation has to be achieved with particular emphasis on welfare legislation, social reform, weaker sections and senior citizens and other categories requiring assistance must be given utmost priority."*

*(emphasis supplied)*

*None of the pious platitudes in the National Litigation Policy have been followed indicating not only the Union of India's*

*lack of concern for the justice delivery system but scant regard for its own National Litigation Policy.*

***8.*** *The website of the Department of Justice shows that the National Litigation Policy, 2010 is being reviewed and formulation of the National Litigation Policy, 2015 is under consideration. When this will be finalised is anybody's guess. There is also an Action Plan to Reduce Government Litigation which was formulated on 13-6-2017.*

***9.*** *Nothing has been finalised by the Union of India for the last almost about 8 years and under the garb of ease of doing business, the judiciary is being asked to reform. The boot is really on the other leg.*

***10.*** *Interestingly, the Action Plan mentions, among others, two interesting steps to reduce pendency:*

> *(i) Avoid unnecessary filing of appeals—appeals should not be filed in routine matters—only in cases where there is a substantial policy matter.*
>
> *(ii) Vexatious litigation should be immediately withdrawn.*

*These pendency reduction steps (particularly (ii) above) have been conveniently overlooked as far as this appeal is concerned.*

***11.*** *To make matters worse, in this appeal, the Union of India has engaged 10 lawyers, including an Additional Solicitor General and a Senior Advocate! This is as per the*

*appearance slip submitted to the Registry of this Court. In other words, the Union of India has created a huge financial liability by engaging so many lawyers for an appeal whose fate can be easily imagined on the basis of existing orders of dismissal in similar cases. Yet the Union of India is increasing its liability and asking the taxpayers to bear an avoidable financial burden for the misadventure. Is any thought being given to this?*

***12.*** *The real question is: when will the Rip Van Winkleism stop and the Union of India wake up to its duties and responsibilities to the justice delivery system?*

***13.*** *To say the least, this is an extremely unfortunate situation of unnecessary and avoidable burdening of this Court through frivolous litigation which calls for yet another reminder through the imposition of costs on the Union of India while dismissing this appeal. We hope that someday some sense, if not better sense, will prevail on the Union of India with regard to the formulation of a realistic and meaningful National Litigation Policy and what it calls "ease of doing business", which can, if faithfully implemented benefit litigants across the country.*

***14.*** *The appeal is dismissed with costs of Rs 1,00,000 as before to be deposited with the Supreme Court Legal Services Committee within four weeks from today for*

*utilisation for juvenile justice issues. Pending IAs are also disposed of.*

***15.*** *List for compliance after five weeks."*

**UNIVERSAL DECLARATION ON BIOETHICS AND HUMAN RIGHTS 2005.**

**Article 3 – Human dignity and human rights**

**1.** Human dignity, human rights and fundamental freedoms are to be fully respected.

**2.** The interests and welfare of the individual should have priority over the sole interest of science or society.

**Article 5 – Autonomy and individual responsibility**

The autonomy of persons to make decisions, while taking responsibility for those decisions and respecting the autonomy of others, is to be respected. For persons who are not capable of exercising autonomy, special measures are to be taken to protect their rights and interests.

**Article 6 – Consent**

**1.** Any preventive, diagnostic and therapeutic medical intervention is only to be carried out with the prior, free and informed consent of the person concerned, based on adequate information. The consent should, where appropriate, be express and may be withdrawn by the person concerned at any time and for any reason without disadvantage or prejudice.

**Article 11 – Non-discrimination and non-stigmatization**

No individual or group should be discriminated against or stigmatized on any grounds, in violation of human dignity, human rights and fundamental freedoms.